IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11273 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HANIFSHA MAHMMADSHA FAKIR

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR SP DAVE AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Article 226 of the Constitution of India challenging the order of his detention passed by the District Magistrate, Rajkot - respondent no. 2 herein on

16.9.2000 in exercise of the powers conferred by Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA").

2. The petitioner was found to be the bootlegger by the said authority and therefore, he was found to be the person fit to be detained in exercise of the powers conferred by the Act.

3. The petitioner has challenged the aforesaid order of his detention dated 16/9/2000 on various grounds. One of the contentions is that the order of detention has been recorded by the learned District Magistrate, Rajkot. It is also the contention that the detaining authority himself was required to verify the statement of witnesses recorded by other authority in the present case. That the detaining authority himself did not verify the statements of witnesses but it was done by the Dy. S.P. at Jetpur and therefore, the verification was not done by the authority himself and consequently, the order of detention cannot be sustained in the eye of law.

4. On the aforesaid contention, the petitioner has prayed that the order of detention may be treated to be illegal and consequently, the order of detention passed against him be quashed and set aside and the petitioner may be set at liberty forthwith.

5. On receiving the petition, Rule was issued and Mr. S.P. Dave, learned AGP appears on behalf of the respondents and waived service of Rule. I have heard Mr. D.M. Thakkar learned advocate for the petitioner and Mr. S.P. Dave, learned AGP for Respondents.

6. On going through the papers supplied to the petitioner, it clearly reveals that statements of witnesses were recorded by the P.I. Dhoraji. This can be gathered from Page Nos. 47 to 54 of the compilation. The xerox copies show that they were verified by the Dy.S.P., Jetpur. This means that the statements of unnamed witnesses were recorded by the P.I. Dhoraji and they were verified by the Dy.S.P. Jetpur. This would clearly mean that the detaining authority himself has not verified these statements personally.

7. The learned advocate for the petitioner had argued at length that the detaining authority in order to show his subjective satisfaction to the material made available to him, was required to himself verify the correctness and genuineness of the statements made by the witnesses. That therefore, verification was required to

be made by him but in the present case, the detaining authority has not verified the statements of the witnesses but they were verified by the Dy. S.P. Jetpur. That since the verification has not been made by the detaining authority himself, the order of detention cannot be sustained and be treated as illegal.

8. In support of the said contention, learned advocate for the petitioner has relied upon a decision of NAZIMKHAN JILEDARKHAN PATHAN VS. STATE OF GUJARAT, reported in 2000 (1) GLH P.653. It would be worthwhile to reproduce para 6 of the said decision here below for ready reference :-

> "Considering the facts of the present case, one factual aspect remains undisputed, namely, that the detaining authority has exercised the powers for detention after being subjectively satisfied about the need to exercise the privilege under Section 9(2) of the PASA Act. That power is exercised in respect of all the three witnesses. It also remains undisputed that one of the witnesses has not been examined by the detaining authority. The result is that the detaining authority could not have arrived at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act in respect of that witness and, therefore, the exercise of powers under Section 9(2) to that extent would stand vitiated as having been exercised without actual application of mind. The entire order of detention, therefore, would stand vitiated and the petition deserves to be allowed."

9. In the present case, the PI Jetpur has examined witnesses and their statements have been recorded by him. However, the detaining authority did not verify the statements of any of those witnesses and he placed reliance on the verification done by Dy.S.P. Jetpur.

10. In above view of the matter, when the detaining authority has not verified the statements of these witnesses, it can be said that the entire order of detention, stands vitiated.

11. It seems that the principle enunciated in the judgement (Supra), squarely applies to the facts of the present case before us. In that view of the matter, I respectfully follow the decision arrived at by this Court in the aforesaid matter and consequently, it is required to be found that the order of detention is illegal.

12. For the reasons stated above, the petition is required to be allowed and the order of detention against the petitioner is required to be set aside. In view of above, other points have not been pressed into service. For the fore going reasons, the petition is allowed. The impugned order dated 16/9/2000 passed by the District Magistrate, Rajkot city is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule is made absolute accordingly. Direct Service Permitted.

(D.P. Buch, J.)

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